

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:16-cv-00355-FL**

SHANE MATHIS, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

LENDMARK FINANCIAL SERVICES, LLC,

Defendant.

**DEFENDANT’S MOTION TO
DISMISS AND, IN THE
ALTERNATIVE, TO
COMPEL ARBITRATION
AND STAY PROCEEDINGS**

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, and Rule 7.1 of the Court’s Local Civil Rules, Defendant Lendmark Financial Services, LLC respectfully moves to dismiss the complaint and, in the alternative, to compel arbitration and stay all further proceedings.

Under Rule 12(b)(1), Lendmark moves to dismiss the complaint on the grounds that a mandatory arbitration agreement bars this lawsuit. In the alternative, and on the same grounds, Lendmark moves the Court for an order compelling arbitration and staying all further proceedings under section 3 of the Federal Arbitration Act.

Under Rule 12(b)(6), Lendmark moves to dismiss the complaint on the grounds that the Plaintiff did not—and cannot—allege an essential element of his claim.

Lendmark is contemporaneously submitting a memorandum in support of this motion.

Respectfully submitted the 7th day of November, 2016.

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**COUNSEL FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel and parties of record, and that I have this day served a copy of the foregoing upon all parties by depositing a copy of the same in the United States mail, postage prepaid, addressed to the following:

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This the 7th day of November, 2016.

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